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Attorneys for Defendants and Counterclaimants  
 Dorothy Tovar and Adrenaline Sports, Inc.

UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

R & R PARTNERS, a Nevada Corporation, and )  
 the LAS VEGAS CONVENTION AND )  
 VISITORS AUTHORITY, )

Plaintiffs, )

v. )

DOROTHY TOVAR, an individual, and )  
 ADRENALINE SPORTS, INC., )

Defendants. )

AND RELATED COUNTERCLAIMS. )

Case No. CV-N-04-0145-LRH(PAL)

**DEFENDANTS' OBJECTIONS TO THE  
 DECLARATIONS OF:**

**MARK DICKENS,  
 YOSHIKO INOUE,  
 TERRY JICINSKY,  
 ROSSI RALENKOTTER,  
 JAMES RATHNER,  
 MIKE SLOAN, AND  
 WILLIAM VASSILIADIS**

Defendants DOROTHY TOVAR and ADRENALINE SPORTS, INC. (collectively, "Tovar") hereby respectfully object to the Declarations filed by Plaintiffs R&R PARTNERS ("R&R") and the LAS VEGAS CONVENTION AND VISITORS AUTHORITY ("LVCVA").

**I. DECLARATION OF MARK DICKENS**

Dickens is Dorothy Tovar's ex-fiancé. Their relationship collapsed to such a degree that she was required to obtain a Temporary Restraining Order against him for self-protection. A true and

correct copy of this TRO is attached to the Second Declaration of Dorothy Tovar filed herewith and is suitable for judicial notice, Fed. R. Evid. 201(b), as to its existence. *Transmission Agency of Northern California v. Sierra Pacific Power Co.*, 287 F.3d 771 (9th Cir. 2002). Evidence of this sort is fully admissible to show motive and intent to act in a particular manner. Fed. R. Evid. 402(b). The unhappy relationship between Mark Dickens and Dorothy Tovar raises clear questions as to the credibility of his declaration.

Paragraph 5 of the Dickens Declaration relates alleged statements by Jeremy Pluto to Dickens. These alleged statements are unavoidably in violation of the hearsay rule as they are out of court statements of an absent non-party offered for their truth. Fed. R. Evid. 801(c); Fed. R. Civ. P. 56(c) (affidavits shall be made on personal knowledge and on facts admissible in evidence). The statements find no comfort in the exclusions and exceptions from the hearsay rule. so the statements are wholly inadmissible and cannot be considered.

## **II. DECLARATION OF YOSHIKO INOUE**

Yoshiko Inoue is an attorney for LVCVA. Her declaration seeks to authenticate various documents for purposes of judicial notice.

Exhibit A is a Deed of Trust between Tovar and McDonough Holland & Allen PC. This document is wholly irrelevant to this litigation, Fed. R. Evid. 401, except insofar as it reflects the intensity of Tovar's belief in the rightness of her cause.

Exhibit B is a certificate of cancellation of the Nevada registration of the WHAT HAPPENS HERE STAYS HERE mark for clothing. This document has never been produced during discovery in this action, despite specific requests seeking all information and documents relating to that mark. See Tovar's 1st Req. for Prod. of Docs to R&R, #10, attached hereto as **Exhibit A**. Having failed to produce this document or information concerning it in discovery, R&R and LVCVA should be barred from relying on this document on this motion.

Exhibit O is said to be a printout of pages at [www.rrpartners.com](http://www.rrpartners.com). This document is objectionable on multiple grounds. First, the printout is the website as of March 12, 2006, a date of no relevance at all to the litigants or the litigation. Second, this document contains alleged facts

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1 without support or source, constituting hearsay and multiple layers of hearsay, The author of this  
2 document is not revealed, and there is plainly no swearing even attempting to support this document.

3 Finally, Exhibit P is said to be a printout of a Lexis People Search purporting to show that  
4 Jerome Pluto has some form of interest in or residence at 5541 Ralston Way in Placerville at various  
5 times. The source of this data is entirely unclear, and the information itself establishes it has errors  
6 because it refers to Dorothy L. Pluto, not Dorothy Tovar. There is no basis on which to conclude  
7 that this document has any accuracy, and it is unquestionably hearsay.

### 8 **III. DECLARATION OF TERRY JICINSKY**

9 Terry Jicinsky is employed at LVCVA and was deposed in this litigation. His declaration  
10 differs from his deposition in significant respects and, on that basis, is inadmissible on a motion for  
11 summary judgment. Attached hereto as **Exhibit B** is an extract from Jicinsky's deposition,  
12 reflecting the content of his testimony. Specifically Mr. Jicinsky was asked:

13 Q. All right. Does the Las Vegas -- does the LVCVA attach "What Happens Here Stays  
14 Here" to clothing?

15 A. Not on a regular basis. I have -- we have used it once on internal T-shirts.

16 Q. Were those internal T-shirts publicly available? Could the public purchase one of  
17 these T-shirts?

18 A. No, they could not.

19 "The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an  
20 affidavit contradicting his prior deposition testimony." *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d  
21 262, 266 (9th Cir. 1991). Jicinsky attempts to further alter his deposition by stating that LVCVA has  
22 "passed out clothing for promotional purposes" at no cost to the recipient. Not only does this differ  
23 from his deposition, but it is meaningless due to the lack of detail. What kind of clothing? How  
24 many articles of clothing, passed out to how many people? What period of time—one occasion out  
25 of a number of years or many occasions? The total lack of detail and inconsistency with previous  
26 deposition testimony deprives this declaration of any substantive meaning.

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28 ///

1 **IV. DECLARATION OF ROSSI RALENKOTTER**

2 Rossi Ralenkotter's Declaration contains inadmissible hearsay in paragraphs 4 ("R&R  
3 advised me"), 6 ("Mr. Vassiliadis agreed"), 7 ("R&R identified" "R&R assessed"), and 8 ("Mr.  
4 Vassiliadis told me"). All of these hearsay statements are incompetent and may not be considered.  
5 Fed. R. Evid. 801(c); Fed. R. Civ. P. 56(c).

6 Ralenkotter makes a number of statements in his declaration that are contrary to interrogatory  
7 answers given in this litigation as well as his earlier declaration. When asked to state the basis for its  
8 assertion that it owned the WHHSH slogan, R&R previously responded that "R&R first started using  
9 the mark on or before December 27, 2002 and the mark became instantly famous." Second Ballard  
10 Dec. at Exh. 1, Response No. 7. R&R does not mention any oral assignment between the Plaintiffs.  
11 Second, Ralenkotter's declaration disclosing his participation in the process culminating in the  
12 written assignment does not mention any alleged oral assignment. First Ralenkotter Dec. In fact,  
13 Ralenkotter testified during deposition that he did not know the meaning of the word "assign."  
14 Second Ballard Dec. at Exh. 14 at 37:16 – 41:7. Ralenkotter's testimony is consistent only with his  
15 grant to R&R of the right to sue to enforce the mark. *Id.* Third, the written assignment agreement  
16 eventually entered into lacks any mention of the alleged oral assignment. First Ballard Dec. at Exh.  
17 31. The amendment to that Agreement, moreover, created to "more accurately reflect the intention  
18 of the Parties," also does not mention the alleged oral assignment. Puschnig Decl. at Exh. A. There  
19 is, literally, no evidence of any such oral agreement. Ralenkotter's Declaration is incompetent and  
20 must be disregarded in all those respects.

21 **V. DECLARATION OF JAMES RATHNER**

22 The Rathner declaration describes an e-mail in significant detail yet provides no copy of it as  
23 an exhibit. Rule 1002 of the Federal Rules of Evidence requires that the original writing be  
24 produced when a litigant seeks to prove the contents of a writing. *United States v. Bennett*, 363 F.3d  
25 947, 953-954 (9th Cir. 2004). A duplicate can be admitted in proper circumstances under Rule 1003,  
26 but no duplicate is offered. None of the grounds for proceeding without the original or a duplicate is  
27 satisfied in this instance. See Fed. R. Evid. 1004-1007. Accordingly, all mention of the e-mail and  
28 its contents should be stricken.

Paragraph 4 of the Rathner Declaration is also objectionable in that it contains inadmissible opinion testimony of a lay witness contrary to Rule 701 of the Federal Rules of Evidence. Opinions offered by James Rathner are incompetent and irrelevant.

#### VI. DECLARATION OF MIKE H. SLOAN

Paragraph 3 of the Declaration of Mike H. Sloan is objectionable because its implications are not supported by its facts. Sloan states that he “began seeing T-shirts with a slogan sufficiently similar to WHAT HAPPENS HERE STAYS HERE that [he] understood the T-shirts to be in some way associated with LVCVA ....” There is no indication that the T-shirts in question were related in any way to Tovar. Sloan does not identify the slogan appearing on the T-shirts he saw, nor the source of the T-shirts. These shirts could have been knock-offs of Tovar’s shirts or shirts that were similar but differed in any of a variety of ways. As Plaintiffs themselves note, there are many slogans in the “What Happens \*\*\* Stays \*\*\*” format. Sloan does not even state that the T-shirt he saw even used Tovar’s WHAT HAPPENS in VEGAS STAYS IN VEGAS mark. As a result, this declaration lacks any relevance and must be disregarded. Fed. R. Evid. 401.

#### VII. DECLARATION OF WILLIAM VASSILIADIS

William Vassiliadis is employed at R&R. He responded to interrogatories for R&R in this litigation. His interrogatory answers differ from his declaration in significant respects and, on that basis, is inadmissible on a motion for summary judgment. Attached hereto as **Exhibit C** are the interrogatory answers, reflecting the variations in content. “The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony.” *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991).

Paragraph 4 of his declaration uses the phrase “R&R began seeing.” As an artificial entity, R&R could not see in the manner reflected. If some of its employees began seeing, then the paragraph is reciting hearsay containing statements by the employees. Vassiliadis then states that “R&R notified LCVCA,” another phrase that denies the reader knowledge of the identity of the actor. None of paragraph 4 survives scrutiny.

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1 Paragraph 5 describes discussions with Rossi Ralenkotter in such vague terms that one  
2 cannot determine where the hearsay begins and ends. Paragraph 6 is even more objectionable  
3 because it recites blatant hearsay intermingled with vague discussions.

4 Paragraph 7 describes an oral agreement for transfer of the trademark in violation of federal  
5 and Nevada law, as described above. For these reasons, the Vassiliadis declaration is inadmissible.

6 **VIII. CONCLUSION**

7 These declarations are last minute attempts to manufacture "actual" evidence of confusion in  
8 the marketplace and a lawful basis for the oral assignment of WHHSH from LVCVA to R&R. The  
9 Court should neither countenance nor credit these declarations.

10 DATED: March 21, 2006

11 McDONOUGH HOLLAND & ALLEN PC  
12 Attorneys at Law

13  
14 By: /s/ Daniel N. Ballard  
DANIEL N. BALLARD

15 Attorneys for Dorothy Tovar and Adrenaline  
16 Sports, Inc

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

R & R PARTNERS, a Nevada Corporation,  
Plaintiff,  
v.  
DOROTHY TOVAR, an individual,  
Defendant.

Case No. CV-N-04-0145-LRH-VPC

**DOROTHY TOVAR'S REQUEST FOR  
PRODUCTION OF DOCUMENTS, SET  
ONE**

**AND RELATED COUNTERCLAIMS**

Defendant and Counterclaim plaintiff Dorothy Tovar ("Tovar"), pursuant to Fed. R. Civ. P. 34, requests that Plaintiff and Counterclaim defendant R&R Partners ("R&R") produce the following documents and tangible things for inspection and copying at the offices of McDonough Holland & Allen PC at 555 Capitol Mall in Sacramento, California no later than thirty days after service of this First Set of Requests for Production of Documents and Tangible Things ("Requests").

**DEFINITIONS**

1. **YOU and YOUR** means and refers to R&R, and its officers, directors, employees, parent corporations, divisions, subsidiaries, predecessors, successors-in-interest, agents,

representatives, attorneys, investigators, and consultants.

2. **PERSON** and **PERSONS**, and the possessive form of those terms, mean and include natural persons, corporations, associations, organizations, partnerships, joint ventures, and any other kind of business or other entity.

3. **RELATING TO, RELATED TO, RELATE TO, and RELATES TO** mean containing, alluding to, responding to, connected with, regarding, discussing, involving, showing, describing, analyzing, reflecting, identifying, incorporating, referring to, or in any way pertaining to.

4. **INCLUDING** means including, in conjunction with, in cooperation with, together with, and accompanied by, all without limitation.

5. **DOCUMENT** and **DOCUMENTS** mean and refer to all documents of any type and description as identified in and within the scope of Fed. R. Civ. P. 34(a) and the 1970 Advisory Committee Note thereto, and all forms of writings and recordings as defined in Fed. R. Evid. 10001(1). The term includes, but is not limited to, printed, typewritten, handwritten, computer-created or machine-generated documents or reproductions thereof, of whatever character, including without limitation; letters, memoranda, contracts, agreements, addenda, disclosures, offers, counter-offers, printed or unprinted electronic mail, telephone records or logs, telegrams, facsimile transmissions, handwritten notations, diaries, calendar notations, appointment books, meeting minutes or descriptions thereof, time sheets, bank account records, billing sheets, expense accounts, expense account reports, drawings, graphs, charts, photographs, photograph records, data processing reports and forms, data compilations from which information can be obtained or translated, advertisements, and any non-identical copies of any of the foregoing, or combinations of any of the foregoing whether original, draft, or copy. This definition applies to all **DOCUMENTS** on the particular subject in **YOUR** possession, custody, or control, or that of **YOUR** attorneys, agents, employees, officers, directors, or representatives, irrespective of who generated, prepared, or signed the **DOCUMENTS**.

6. **COMMUNICATION** or **COMMUNICATIONS** mean any transmission of information from one person to another, including, but not limited to; letter, memorandum, telegraph, facsimile transmission, electronic mail, inter-office and intra-office communications,



1 verbal contact in face-to-face meetings, telephone conversation, or otherwise.

2 7. **SPECIMEN** means any tangible thing and includes, but is not limited to, electronic  
3 and tape media.

4 8. The singular shall be deemed to include the plural and vice versa; the disjunctive  
5 ("or") shall be deemed to include the conjunctive ("and"); and the conjunctive ("and") shall be  
6 deemed to include the disjunctive ("or").

7 **INSTRUCTIONS**

8 9. **YOU** are required to produce all **DOCUMENTS** and tangible things in **YOUR**  
9 possession, custody, or control that are requested herein. Copies of **DOCUMENTS** containing  
10 notations, interlineations, or other legible information added to an original or copy of a  
11 **DOCUMENT** is considered separate and distinct from any other copy of the identical  
12 **DOCUMENT** and shall be produced.

13 10. **YOU** are required by this Request for Production and Fed. R. Civ. P 34(b) to either  
14 produce the **DOCUMENTS** as kept in the usual course of business or have the **DOCUMENTS**  
15 organized and labeled to correspond to each Request set forth below. When produced in the usual  
16 course of business or as labeled to correspond to each Request set forth below, the **DOCUMENTS**  
17 and tangible things shall be produced with the folders, or copies thereof, kept by the **PERSON** who  
18 had the **DOCUMENTS** in his, her, or its possession, custody, or control so that Tovar will know  
19 who had the **DOCUMENT** or thing in his, her, or its possession, custody, or control.

20 11. If any responsive **DOCUMENT** no longer exists, cannot be located, is not in **YOUR**  
21 possession, or cannot be produced in full, **YOU** are required to identify it, describe its subject matter,  
22 describe its disposition, identify all **PERSONS** with knowledge of its disposition, and produce the  
23 **DOCUMENT** to the extent possible.

24 12. As to any **DOCUMENTS** for which **YOU** assert a privilege, immunity, or other  
25 protection, **YOU** are required to fully comply with Fed. R. Civ. P. 26(b)(5) including, but not limited  
26 to, identifying the **DOCUMENTS** with particularity by stating their date of creation, intended  
27 recipients, subject matter, number of pages, and the full name and job title of each **PERSON** who  
28 has seen either the original or a copy of the **DOCUMENTS**, or has knowledge of their subject

1 matter or contents, and explain the grounds and precise nature of each privilege, immunity or other  
2 protection claimed.

3 13. These Requests shall be deemed continuing in accordance with Fed. R. Civ. P. 34(b).

4 **REQUEST FOR PRODUCTION**

5 1. All **DOCUMENTS** required by Fed. R. Civ. P. 26(a)(1)(B), (C) and (D).

6 2. All **DOCUMENTS YOU** identified or referred to in **YOUR** responses to Tovar's  
7 First Set of Interrogatories that are not produced in response to the following Requests.

8 3. All **DOCUMENTS** that **RELATE TO YOUR** assertion that consumers associate  
9 the term "What Happens Here Stays Here" with **YOU**.

10 4. All **DOCUMENTS** that **RELATE TO YOUR** assertion that consumers associate  
11 the term **WHAT HAPPENS IN VEGAS STAYS IN VEGAS** with **YOU**.

12 5. All **DOCUMENTS RELATING TO** any good or service **YOU** have sold, offered  
13 for sale, or licensed, or intend to sell, offer for sale, or license, under or in connection with the term  
14 "What Happens Here Stays Here."

15 6. All **DOCUMENTS RELATING TO** any good or service **YOU** have sold, offered  
16 for sale, or licensed, or intend to sell, offer for sale, or license, under or in connection with the term  
17 **WHAT HAPPENS IN VEGAS STAYS IN VEGAS**.

18 7. All **DOCUMENTS RELATING TO** any good or service that any of **YOUR**  
19 licensees have sold or offered for sale, or intend to sell or offer for sale, under or in connection with,  
20 the term "What Happens Here Stays Here."

21 8. All **DOCUMENTS RELATING TO** any good or service that any of **YOUR**  
22 licensees have sold or offered for sale, or intend to sell or offer for sale, under or in connection with,  
23 the term **WHAT HAPPENS IN VEGAS STAYS IN VEGAS**.

24 9. All **DOCUMENTS** comprising or **RELATING TO YOUR** U.S. Trademark  
25 Applications, Serial Nos. 76/619,984 and 76/582,191, for the term "What Happens Here Stays  
26 Here," including, but not limited to, **COMMUNICATIONS** and the file history or file wrapper.

27 10. All **DOCUMENTS** comprising or **RELATING TO** any state trademark applications  
28 for the term "What Happens Here Stays Here" including, but not limited to, **COMMUNICATIONS**

1 and the file history or file wrapper.

2 11. All **COMMUNICATIONS** between **YOU** and any third party **RELATING TO**  
3 **YOUR**, or any other person's, right to use, own, or preclude others from using or owning, the term  
4 "What Happens Here Stays Here."

5 12. All **COMMUNICATIONS** between **YOU** and any third party **RELATING TO**  
6 **YOUR**, or any other person's, right to use, own, or preclude others from using or owning, the term  
7 **WHAT HAPPENS IN VEGAS STAYS IN VEGAS**.

8 13. All **DOCUMENTS** comprising or **RELATING TO** any licenses, assignments, or  
9 other agreements between **YOU** and any third party that **RELATES TO** the term "What Happens  
10 Here Stays Here."

11 14. All **DOCUMENTS** comprising or **RELATING TO** any licenses, assignments, or  
12 other agreements between **YOU** and any third party that **RELATES TO** the term **WHAT**  
13 **HAPPENS IN VEGAS STAYS IN VEGAS**.

14 15. All **COMMUNICATIONS** between **YOU** and any third party **RELATING TO** any  
15 and all trademark or service mark applications **YOU** contemplated filing, filed, or intend to file for  
16 the term "What Happens Here Stays Here."

17 16. A **SPECIMEN** of each good that is being used or intended to be used by **YOU** or  
18 **YOUR** licensees on which the term "What Happens Here Stays Here" appears.

19 17. A **SPECIMEN** of each good that is being used or intended to be used by **YOU** or  
20 **YOUR** licensees on which the term **WHAT HAPPENS IN VEGAS STAYS IN VEGAS** appears.

21 18. A **SPECIMEN** of each label, packaging, tag, or other source identifier that is being  
22 used or intended to be used by **YOU** or **YOUR** licensees on which the term "What Happens Here  
23 Stays Here" appears.

24 19. A **SPECIMEN** of each label, packaging, tag, or other source identifier that is being  
25 used or intended to be used by **YOU** or **YOUR** licensees on which the term **WHAT HAPPENS IN**  
26 **VEGAS STAYS IN VEGAS** appears.

27 20. A **SPECIMEN** of each advertisement in which **YOU** or **YOUR** licensees have used  
28 or intend to use the term "What Happens Here Stays Here."

1           21.     A **SPECIMEN** of each advertisement in which **YOU** or **YOUR** licensees have used  
2 or intend to use the term **WHAT HAPPENS IN VEGAS STAYS IN VEGAS**.

3           22.     A **SPECIMEN** of each webcast and television and radio broadcast in which **YOU** or  
4 any of **YOUR** licensees have used or intend to use the term "What Happens Here Stays Here."

5           23.     A **SPECIMEN** of each webcast and television and radio broadcast in which **YOU** or  
6 any of **YOUR** licensees have used or intend to use the term **WHAT HAPPENS IN VEGAS STAYS**  
7 **IN VEGAS**.

8           24.     All **DOCUMENTS RELATING TO** the date the term "What Happens Here Stays  
9 Here" was first used by **YOU** or on **YOUR** behalf, either alone, or in combination with other terms  
10 or designs, in any manner, in connection with any good or service, including use in commerce and  
11 use anywhere in the United States.

12           25.     All **DOCUMENTS RELATING TO YOUR** proposed, intended, or actual use of the  
13 term **WHAT HAPPENS IN VEGAS STAYS IN VEGAS**, whether internal or available to public or  
14 customers, including, without limitation, business plans, financial estimates, advertising designs and  
15 mock ups, marketing memoranda and materials, or advertising materials in the form of any online  
16 and/or Internet marketing or advertising, web sites, electronic kiosks, electronic commerce devices,  
17 trade shows, sales pitches, customer brochures, direct mail, contests, job fairs, events at any  
18 University or school, catalogs, labels, and packaging.

19           26.     All **DOCUMENTS** comprising or **RELATING TO** any opinion requested by or  
20 received by **YOU** regarding **YOUR** use or adoption of the term "What Happens Here Stays Here,"  
21 **YOUR** right to use or register any marks or designations consisting of or including the term "What  
22 Happens Here Stays Here" or whether **YOUR** use or adoption of the term "What Happens Here  
23 Stays Here" would infringe or not infringe upon the rights of any other entity or Person.

24           27.     All **DOCUMENTS RELATING TO** any instances of actual or perceived confusion,  
25 mistake, or deception as to the source of **YOUR** goods or services branded under or in connection  
26 with the term "What Happens Here Stays Here."

27           28.     All **DOCUMENTS RELATING TO** any efforts by **YOU** to protect, enforce,  
28 monitor, or otherwise maintain **YOUR** alleged rights to exclusively use or own the term "What

Happens Here Stays Here" as a trade name, trademark, service mark, or any other legal right.

29. All **DOCUMENTS RELATING TO YOUR** alleged rights to exclusively use or own the term **WHAT HAPPENS IN VEGAS STAYS IN VEGAS** as a trade name, trademark, service mark, or any other legal right.

30. Financial **DOCUMENTS**, including but not limited to, invoices, billing documents, or accounting documents, **RELATING TO** the annual sales or revenues in units and dollars for goods or services provided by **YOU** and **YOUR** licensees under or in connection with the term "What Happens Here Stays Here" from the earliest date of **YOUR** or **YOUR** licensees alleged first use of the term "What Happens Here Stays Here" in any manner to present.

31. All **DOCUMENTS RELATING TO YOUR** and **YOUR** licensees' annual advertising, marketing, or promotional costs including, but not limited to, **DOCUMENTS RELATING TO** budgeting and receipts for goods or services sold or proposed to be sold under or in connection with the term "What Happens Here Stays Here" from the earliest date of **YOUR** or **YOUR** licensees alleged first use of the term "What Happens Here Stays Here" in any manner to present.

32. All **DOCUMENTS RELATING TO YOUR** and **YOUR** licensees' customers or the nature of the classes or types of purchasers to whom **YOU** and **YOUR** licensees market, including but not limited to, business, institutional, and individual customers, or purchasers of any good or service sold under or in connection with the term "What Happens Here Stays Here" from the earliest date of **YOUR** or **YOUR** licensees alleged first use of the term "What Happens Here Stays Here" in any manner to present.

33. All **DOCUMENTS RELATING TO** any statements or opinions of any expert obtained by **YOU** or any person acting for or on **YOUR** behalf regarding any issue in this case, including, but not limited to, any evidence of actual or likely confusion caused by Tovar's use of the term **WHAT HAPPENS IN VEGAS STAYS IN VEGAS**.

34. All **DOCUMENTS RELATING TO YOUR** assertion in **YOUR** Second Affirmative Defense that "Tovar's claims are barred because she does not have priority in the **WHAT HAPPENS IN VEGAS STAYS IN VEGAS** mark."

1           35.    All DOCUMENTS RELATING TO YOUR assertion in YOUR Fourth Affirmative  
2 Defense that Tovar "fraudulently attempted to procure a trademark registration(s) for the WHAT  
3 HAPPENS IN VEGAS STAYS IN VEGAS and WHAT HAPPENS ON SPRING BREAK  
4 trademark."

5           36.    All DOCUMENTS RELATING TO YOUR assertion in Paragraph 15 of YOUR  
6 Complaint that "Tovar's unauthorized, intentional and willful use of R&R's Mark creates a likelihood  
7 of confusion, mistake and deception as to the affiliation, connection, association, origin, sponsorship  
8 or approval of the goods and services of R&R with those of Tovar."

9           37.    All DOCUMENTS RELATING TO YOUR assertion in Paragraph 16 of YOUR  
10 Complaint that "actual confusion of consumers has occurred or will likely occur and will continue to  
11 occur as a result of the acts of Tovar."

12           38.    All DOCUMENTS RELATING TO YOUR assertion in Paragraph 33 of YOUR  
13 Complaint that the term "What Happens Here Stays Here" "is a distinctive and famous mark."

14           39.    All DOCUMENTS RELATING TO YOUR assertion in Paragraph 36 of YOUR  
15 Complaint that "Tovar acted to defraud and oppress R&R through its intentional and willful use of  
16 R&R's Mark, and by inducing others to infringe on R&R's Mark."

17           40.    All DOCUMENTS RELATING TO YOUR assertion in Paragraph 41 of YOUR  
18 Complaint that "Tovar has blurred the unique association which has heretofore existed between  
19 R&R Mark and the goods or services offered by that mark and/or tarnished the reputation of R&R  
20 through the use of its Mark."

21           41.    All DOCUMENTS RELATING TO YOUR document retention policy.

22 DATED: January 28, 2005

23 McDONOUGH HOLLAND & ALLEN PC  
24 Attorneys at Law

25 By: 

26 Attorneys for Defendant and Counterclaimant  
27 Dorothy Tovar  
28

**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5, I certify that I am an employee of Robison, Belaustegui, Sharp & Low, and on this date I hand-delivered a true copy of the attached **DOROTHY TOVAR'S REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE** addressed to:

Kristin Jahn, Esq.  
Jahn & Associates  
565 California Avenue  
Reno, Nevada 89509

Dated this 28<sup>th</sup> day of January, 2005.



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1  
2 IN THE UNITED STATES DISTRICT COURT

3 DISTRICT OF NEVADA

4 R & R PARTNERS, INC., a )  
Nevada corporation, )

5 )  
6 Plaintiff, )

7 vs. ) Case No. CV-N-04-0145

8 DOROTHY TOVAR, an individual, )

9 Defendant. )  
10  
11

12 CERTIFIED COPY

13 DEPOSITION OF TERRY JICINSKY

14  
15 Taken at

16 Las Vegas Hilton

3000 Paradise Road

17 Las Vegas, Nevada

18 On Wednesday, April 13, 2005

At 10:10 A.M.

19  
20  
21  
22  
23  
24  
25 Reported by: Mary E. Howard, CCR No. 762, RPR



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**EXHIBIT B**



Terry Jicinsky April 13, 2005

1 brand?

2 A. Yes. I've had personal conversations with  
3 clients and visitors who have used the statement "What  
4 Happens in Vegas Stays in Vegas" in context of the  
5 destination advertising campaign and the LVCVA's  
6 development and implementation of that, and that the terms  
7 are interchangeable.

8 Q. What does the LVCVA use the term "What  
9 Happens" -- "What Happens Here Stays Here" for?

10 A. In printed advertising and television  
11 advertising in connection with the Las Vegas logo which  
12 contains the word Las Vegas.

13 Q. And the purpose of using that -- is it fair to  
14 say that the purpose of using "What Happens Here Stays  
15 Here" is to promote tourism and convention visitors to the  
16 City of Las Vegas?

17 A. Yes.

18 Q. All right.

19 Does the Las Vegas -- does the LVCVA attach  
20 "What Happens Here Stays Here" to clothing?

21 A. Not on a regular basis. I have -- we have used  
22 it once on internal T-shirts.

23 Q. Were those internal T-shirts publicly available?  
24 Could the public purchase one of these T-shirts?

25 A. No, they could not.

REPORTER'S CERTIFICATE

STATE OF NEVADA )  
 ) SS  
COUNTY OF CLARK )

I, Mary E. Howard, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify: That I reported the taking of the deposition of TERRY JICINSKY, commencing on Wednesday, April 13, 2005, at the hour of 10:10 a.m.

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true, and accurate transcription of my said shorthand notes.

I further certify that I am not a relative or employee of counsel of any of the parties, nor a relative or employee of the parties involved in the action.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 22<sup>nd</sup> day of April, 2005.

Mary E. Howard  
Mary E. Howard, CCR No. 762, RPR

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Attorneys for Plaintiff  
R & R Partners, Inc.

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

R & R PARTNERS, INC., a Nevada  
corporation

Plaintiff

v.

DOROTHY TOVAR, an individual

Defendant.

Case No. CV-N-04-0145-LRH-VPC

**RESPONSE TO DEFENDANT'S FIRST  
SET OF INTERROGATORIES TO  
PLAINTIFF**

Plaintiff, R & R Partners, Inc. ("R & R") hereby responds to Tovar's First Set of Interrogatories to Plaintiff as follows:

**GENERAL OBJECTIONS**

R & R makes the following General Objections which are hereby incorporated into each and every Interrogatory response:

1. R & R objects to each Interrogatory to the extent it seeks or calls for information protected by the attorney-client privilege and or protected by the work-product doctrine, or subject to any other applicable privilege.

2. R & R objects to each Interrogatory to the extent it seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

1 3. R & R objects to each Interrogatory to the extent it purports to call for information not in  
2 their possession.

3 4. R & R objects to each Interrogatory to the extent it seeks information that would violate  
4 any individual's right to privacy.

5 5. R & R objects to the definition of "you" and "your" as being overbroad, unduly  
6 burdensome, vague and ambiguous.

7 6. R & R objects to each Interrogatory to the extent it seeks to impose requirements and/or  
8 obligations inconsistent with and in addition to, the Federal Rules of Civil Procedure, the Federal  
9 Rules of Evidence and/or Local Rules of this Courts, and that are unduly burdensome and  
10 oppressive.  
11

12 7. Discovery is continuing in this action. R & R reserve the right to supplement and amend  
13 its responses to these Interrogatories based on, but not limited to, information subsequently  
14 discovered, inadvertently omitted, or mistakenly stated in these response.  
15

16 8. R & R incorporate these General Objections into each and every response set forth below.

17 9. R & R objects to the interrogatories to the extent that they are premature. The following  
18 responses reflect R & R's present knowledge, information and belief, and may be subject to change  
19 or modification based on R & R's further discovery or on facts or circumstances that may become  
20 within R & R's knowledge.  
21

22 10. R & R objects to "identifying" documents as being unduly burdensome. In lieu thereof,  
23 R & R will make available for inspection and copying relevant, responsive, and non-privileged  
24 documents or business records under Fed. R. Civ. P. 33(d) from which the answer to any particular  
25 interrogatory may be derived or ascertained.  
26

27 11. R & R objects to the interrogatories because they exceed the number allowed under  
28 Federal Rule of Civil Procedure § 33(a).

**RESPONSES TO INTERROGATORIES**

**INTERROGATORY NO. 1.** State the basis for, and describe in detail all facts in support of, YOUR assertion in Paragraph 15 of YOUR Complaint that Tovar's use of the term WHAT HAPPENS IN VEGAS STAYS IN VEGAS "creates a likelihood of confusion, mistake and deception as to the affiliation, connection, association, origin, sponsorship or approval of the goods and services of R&R with those of Tovar" and identify those documents and persons on which YOU will rely to support the allegation.

**RESPONSE TO NO 1:** Plaintiff objects to this Interrogatory on the basis that it calls for a legal conclusion. Plaintiff further objects to the extent it calls for information protected by the attorney client privilege and/or work product doctrine and is a compound interrogatory requesting a response to three separate Interrogatories. Subject to these objections and without waiving any of them R & R responds as follows:

1) The use of the phrase WHAT HAPPENS IN VEGAS STAYS IN VEGAS creates a likelihood of confusion, mistake and deception as to the affiliation, connection, association, origin, sponsorship or approval of the goods and services of R&R with those of Tovar because R & R's famous mark is entitled to wide protection. Numerous newspaper, magazine articles were written about the success of the campaign and fame of the Mark. In addition, the Mark has been referred to on many television shows. R & R has the right to sell souvenir items, including clothing associated with it Mark.

2) Several entities have approached R & R to license the Mark WHAT HAPPENS IN VEGAS STAYS IN VEGAS because they believe that the WHAT HAPPENS HERE STAYS HERE MARK is the same as the WHAT HAPPENS IN VEGAS STAYS IN VEGAS MARK and owned by R & R. Entities which have requested a license from R & R include, Expedia, The Fairfield Inn, Freedom Yacht, Fernbank, Western Media Corporation, Seattle Mariners, Colorado

1 Rockies, and Bell and Young.

2 3) R & R will provide documents responsive to this Request.

3 **INTERROGATORY NO. 2.** State the basis for, and describe in detail all facts in support  
4 of, YOUR assertion in Paragraph 19 of YOUR Complaint that Tovar engaged in the “willful  
5 infringement” of YOUR alleged mark and identify those documents and persons on which YOU  
6 will rely to support the allegation.  
7

8 **RESPONSE TO NO. 2:** Plaintiff objects to this Interrogatory on the basis that it calls for a  
9 legal conclusion. Plaintiff further objects to the extent it calls for information protected by the  
10 attorney client privilege and/or work product doctrine and is a compound interrogatory requesting a  
11 response to three separate Interrogatories. Subject to these objections and without waiving any of  
12 them R & R responds as follows:  
13

14 4) Tovar began using the phrase WHAT HAPPENS IN VEGAS STAYS IN VEGAS well  
15 after R & R’s mark became distinctive and famous. Tovar provided no evidence that a search was  
16 done prior to her use or federal application for WHAT HAPPENS IN VEGAS STAYS IN VEGAS.  
17

18 5) Dorothy Tovar is likely to be the person to reply upon to support this allegation.

19 **INTERROGATORY NO. 3.** State the basis for, and describe in detail all facts in support  
20 of, YOUR assertion in Paragraph 33 of YOUR Complaint that the term “What Happens Here Stays  
21 Here” “is a distinctive and famous mark,” identify those documents and persons on which YOU will  
22 rely to support the allegation, and state the date the term allegedly became famous.

23 **RESPONSE TO NO. 3:** Plaintiff objects to this Interrogatory on the basis that it calls for a  
24 legal conclusion. Plaintiff further objects to the extent it calls for information protected by the  
25 attorney client privilege and/or work product doctrine and is a compound interrogatory requesting a  
26 response to three separate Interrogatories. Subject to these objections and without waiving any of  
27 them R & R responds as follows:  
28

1           6) R & R 's mark is distinctive and famous because it engaged in a nationwide campaign to  
2 advertise the City of Las Vegas using the Mark and the Mark was immediately repeated by others  
3 including, but not limited to: Billy Crystal at the Oscars in 2004, the Tonight Show several times,  
4 Fraiser, the Today Show, Paula Zahn Now, CSI, Bold and Beautiful, Anything for Love,  
5 Scarborough Country, Buchanan & Press, Late Show with Craig Kilborn, Less than Perfect and Ed.  
6 Additionally, R&R and/or its licensee, LVCVA were approached by a number of entities that  
7 wanted a license to use the Mark which are listed in Interrogatory No. 1 above.  
8

9           7) R & R will produce documents responsive to this request.

10           **INTERROGATORY NO. 4.** State the basis for, and describe in detail all facts in support  
11 of, YOUR assertion in Paragraph 41 of YOUR Complaint that "Tovar has blurred the unique  
12 association which has heretofore existed between R&R Mark and the goods or services offered by  
13 that mark and/or tarnished the reputation of R&R through the use of its Mark" and identify those  
14 documents and persons on which YOU will rely to support the allegation.  
15

16           **RESPONSE TO NO. 4:** Plaintiff objects to this Interrogatory on the basis that it is overly  
17 broad, unduly burdensome, vague and ambiguous. Plaintiff further objects to this Interrogatory on  
18 the basis that it calls for a legal conclusion. Plaintiff further objects to the extent it calls for  
19 information protected by the attorney client privilege and/or work product doctrine and is a  
20 compound interrogatory requesting a response to four separate Interrogatories. Subject to these  
21 objections and without waiving any of them R & R responds as follows:  
22

23           8) Tovar sells clothing on an Internet site called Pure Pleasure. At least this use by Tovar  
24 tarnishes the goodwill associated with the Mark and the reputation of R & R.  
25

26           9) Tovar's use of a colorable imitation of the Mark was not authorized by R & R and has and  
27 will continue to blur the distinctiveness of R & R's famous Mark.

28           10) R & R will reply upon Tovar's Response to Plaintiff's First Set of Production of

1 Documents to support its claim along with documents which R & R will produce.

2 **INTERROGATORY NO. 5.** State the basis for, and describe in detail all facts in support  
3 of, YOUR assertion in Paragraph 36 of YOUR Complaint that "Tovar acted to defraud and oppress  
4 R&R through its intentional and willful use of R&R's Mark, and by inducing others to infringe on  
5 R&R's Mark" and identify those documents and persons on which YOU WILL RELY to support  
6 the allegation.  
7

8 **RESPONSE:** Plaintiff objects to this Interrogatory on the basis that it is overly broad,  
9 unduly burdensome, vague and ambiguous. Plaintiff further objects to this Interrogatory on the  
10 basis that it calls for a legal conclusion. Plaintiff further objects to the extent it calls for information  
11 protected by the attorney client privilege and/or work product doctrine and is a compound  
12 interrogatory requesting a response to three separate Interrogatories. Subject to these objections  
13 and without waiving any of them R & R responds as follows:  
14

15 11) Tovar's use of WHAT HAPPENS IN VEGAS STAYS IN VEGAS was intentional and  
16 willful because her use was subsequent to R & R's use and she did not conduct a search or receive  
17 an opinion on her use prior to adopting it for use on clothing or other items. Upon information and  
18 belief, Tovar licenses the rights to use the WHAT HAPPENS IN VEGAS STAYS IN VEGAS  
19 slogan at least for use on t-shirts and souvenirs to third parties.  
20

21 12) R & R will rely upon Tovar's Response to Plaintiff's First Set of Discovery Requests to  
22 support this claim.

23 **INTERROGATORY NO. 6.** State the basis for, and describe in detail all facts in support  
24 of, YOUR Affirmative Defenses and identify those documents and persons on which you will rely  
25 to support each such defense.  
26

27 **RESPONSE TO NO. 6:** Plaintiff further objects to this Interrogatory on the basis that it  
28 calls for a legal conclusion. Plaintiff further objects to the extent it calls for information protected by



1 the attorney client privilege and/or work product doctrine and is a compound interrogatory  
2 requesting a response to four separate Affirmative Defenses equaling a response to four separate  
3 Interrogatories. Subject to these objections and without waiving any of them R & R responds as  
4 follows:

5  
6 13) The First Affirmative Defense states that the Counterclaim fails to state facts sufficient  
7 to constitute a claim upon which relief can be granted. Defendant has no cause of action against R  
8 & R, but rather seeks a declaratory judgement of rights. Yet, no imminent threat of action against  
9 Tovar was alleged giving rise to a declaratory judgement action.

10  
11 14) The Second Affirmative Defense is self explanatory. Tovar's first use of the WHAT  
12 HAPPENS IN VEGAS STAYS IN VEGAS phrase occurred after R & R's first use of the WHAT  
13 HAPPENS HERE STAYS HERE Mark.

14  
15 15) The Counterclaim lacks subject matter jurisdiction because there was no threat to  
16 Plaintiff of being sued giving rise to a declaratory judgment action.

17  
18 16) Tovar had actual or constructive knowledge of R & R or LVCVA's use of the Mark  
19 prior to filing her federal application. Further, Tovar's use of the Mark is ornamental.

20  
21 **INTERROGATORY NO. 7.** State the basis for, and describe in detail all facts in support  
22 of, YOUR assertion that YOU own trademark or other rights to the term "WhatHappens Here Stays  
23 Here."

24  
25 **RESPONSE TO NO. 7:** Plaintiff objects to this Interrogatory on the basis that it is overly  
26 broad, unduly burdensome, vague and ambiguous. Plaintiff objects to this Interrogatory on the  
27 basis that it calls for a legal conclusion. Plaintiff further objects to the extent it calls for information  
28 protected by the attorney client privilege and/or work product doctrine and is compound. Subject to  
these objections and without waiving any of them R & R responds as follows:

17) R & R first started using the Mark on or before December 27, 2002 and the Mark

1 became instantly famous.

2 **INTERROGATORY NO. 8.** State the basis for, and describe in detail all facts in support  
3 of, YOUR assertion that YOU own trademark or other rights to the term WHAT HAPPENS IN  
4 VEGAS STAYS IN VEGAS.

5 **RESPONSE TO NO. 8:** Plaintiff objects to this Interrogatory on the basis that it is overly  
6 broad, unduly burdensome, vague and ambiguous. Plaintiff objects to this Interrogatory on the basis  
7 that it is overly broad, unduly burdensome, vague and ambiguous. Plaintiff further objects to this  
8 Interrogatory on the basis that it calls for a legal conclusion. Plaintiff further objects to the extent it  
9 calls for information protected by the attorney client privilege and/or work product doctrine and is  
10 compound. Subject to these objections and without waiving any of them R & R responds as  
11 follows:  
12

13  
14 18) The use of the Mark WHAT HAPPENS HERE STAYS HERE in conjunction with  
15 promoting Las Vegas as a destination implies that the "HERE" is LAS VEGAS. In each  
16 advertisement or promotion either the words "ONLY VEGAS" or "VEGAS" appears.

17 **INTERROGATORY NO. 9.** Describe in detail each and every type of good or service on  
18 which, or in connection with which, YOU or any entity authorized or licensed by YOU has ever  
19 used or intends to use the term "What Happens Here Stays Here."  
20

21 **RESPONSE TO NO. 9:** Plaintiff objects to this Interrogatory on the basis that it is overly  
22 broad, unduly burdensome, vague and ambiguous. Plaintiff further objects to the extent it calls for  
23 information protected by the attorney client privilege and/or work product doctrine and is  
24 compound. Subject to these objections and without waiving any of them R & R responds as  
25 follows:  
26

27 19) R & R has licensed the Mark to LVCVA to promote Las Vegas.

28 **INTERROGATORY NO. 10** Describe in detail each and every type of good or service on

1 which, or in connection with which, YOU or any entity authorized or licensed by YOU has ever  
2 used or intends to use the term WHAT HAPPENS IN VEGAS STAYS IN VEGAS.

3 **RESPONSE TO NO. 10:** Plaintiff objects to this Interrogatory on the basis that it is overly  
4 broad, unduly burdensome, vague and ambiguous. Subject to these objections and without waiving  
5 any of them R & R responds as follows:  
6

7 20) Clothing, souvenir items, promotion and advertising, event planning and entertainment.

8 **INTERROGATORY NO. 11.** Describe in detail each and every type of good or service on  
9 which, or in connection with which, YOU or any entity authorized or licensed by YOU has ever  
10 used or intends to use the term WHAT HAPPENS IN VEGAS STAYS IN VEGAS.  
11

12 **RESPONSE TO NO. 11:** Plaintiff objects to this Interrogatory on the basis that it is overly  
13 broad and unduly burdensome.

14 21) R & R has not licensed the Mark WHAT HAPPENS IN VEGAS STAYS IN VEGAS to  
15 anyone. R & R has considered adopting the colorable imitation WHAT HAPPENS IN VEGAS  
16 STAYS IN VEGAS in conjunction with similar goods and services.  
17

18 **INTERROGATORY NO. 12.** Identify and describe in detail the ordinary purchaser or  
19 expected ordinary purchaser of the goods and services sold or to be sold under YOUR "What  
20 Happens Here Stays Here" designation including, without limitation the level of care exercised by  
21 such an ordinary purchaser in purchasing the goods and services sold under the "What Happens  
22 Here Stays Here" designation.  
23

24 **RESPONSE TO NO. 12:** Plaintiff objects to this Interrogatory on the basis that it is overly  
25 broad, unduly burdensome, vague and ambiguous. Subject to these objections and without waiving  
26 any of them R & R responds as follows:

27 22) The ordinary purchaser is very expansive and the marketing is not targeted to anyone in  
28 particular. The consumer for these services ranges from and includes tourists to business people,

1 the employed and unemployed alike, the rich to the poor and both urban and rural.

2 **INTERROGATORY NO.13.** Identify with specificity the channels of trade and mode of  
3 distribution through which YOUR "What Happens Here Stays Here" designation is used or intended  
4 to be used including, but not limited to, the geographic area and the approximate percentage of total  
5 sales of goods or services through each such channel of trade and mode of distribution.  
6

7 **RESPONSE TO NO. 13:** Plaintiff objects to this Interrogatory on the basis that it is overly  
8 broad, unduly burdensome, vague and ambiguous. Plaintiff further objects to the extent it is a  
9 compound interrogatory requesting a response to three separate Interrogatories. Subject to these  
10 objections and without waiving any of them R & R responds as follows:  
11

12 23) The Mark is used on television, clips available on the web-site and print advertisements.

13 24) The advertisements using the mark are international in scope.

14 25) The total number of sales is measured by visitor dollar contribution which was \$32.8  
15 billion in 2003 and \$33.7 billion in 2004.

16 **INTERROGATORY NO. 14.** List every advertisement in which YOUR or YOUR  
17 licensees have used or intend to use the term "What Happens Here Stays Here" and identify (i) in  
18 which media (television, print, internet) each advertisement appeared or will appear, (ii) the dates on  
19 which each advertisement appeared or will appear, and (iii) the total dollar amount expended for  
20 such advertising.  
21

22 **RESPONSE TO NO. 14:** Plaintiff objects to this Interrogatory on the basis that it is overly  
23 broad, unduly burdensome, vague and ambiguous and exceeds the number of Interrogatories  
24 allowed under the Federal Rules, this amounts to Interrogatory Nos 26, 27 and 28. Plaintiff further  
25 objects to the extent it is a compound interrogatory requesting a response to three separate  
26 Interrogatories. Subject to these objections and without waiving any of them R & R responds as  
27 follows:  
28

1 26) and 27) R & R will produce documents in response to i) and ii) above.

2 28) Documents will be produced from which this information can be derived.

3 **INTERROGATORY NO. 15:** List all third parties that have licensed from YOU, or  
4 inquired into licensing from YOU, any rights to the term "What Happens Here Stays Here."

5 **RESPONSE TO NO. 15:** Plaintiff objects to this Interrogatory because it exceeds the  
6 number of Interrogatories allowed under the Federal Rules, this amounts to Interrogatory No. 29.

7 29) LVCVA, Plaintiff also incorporates by reference its response to Interrogatory No. 1.

8 **INTERROGATORY NO. 16.** List all third parties that have licensed from YOU, or  
9 inquired into licensing from YOU, any rights to the term WHAT HAPPENS IN VEGAS STAYS IN  
10 VEGAS.

11 **RESPONSE TO NO. 16:** Plaintiff objects to this Interrogatory on the basis that it is overly  
12 broad, unduly burdensome, vague and ambiguous and exceeds the number of Interrogatories  
13 allowed under the Federal Rules, this amounts to Interrogatory No. 30. Subject to these objections  
14 and without waiving any of them R & R responds as follows:

15 30) R & R incorporates by reference its response to Interrogatory No. 1.

16 **INTERROGATORY NO. 17.** Describe in detail each and every type of good or service on  
17 which, or in connection with which, YOU or any entity authorized or licensed by YOU has ever  
18 used any variation of the term "What Happens Here Stays Here" in which either of the instances of  
19 the word "Here" is replaced with some other word ("Variation").

20 **RESPONSE TO NO. 17:** Plaintiff objects to this Interrogatory on the basis that it is overly  
21 broad, unduly burdensome, vague and ambiguous and exceeds the number of Interrogatories  
22 allowed under the Federal Rules, this amounts to Interrogatory No. 31

23 **INTERROGATORY NO. 18.** Identify with specificity any consumers or potential  
24 consumers who have expressed to YOU or to any of YOUR licensees any question, concern, or  
25

1 comment regarding confusion or similarity between the terms "What Happens Here Stays Here" and  
2 WHAT HAPPENS IN VEGAS STAYS IN VEGAS.

3 **RESPONSE TO NO. 18:** Plaintiff objects to this Interrogatory on the basis that it is overly  
4 broad, unduly burdensome, vague and ambiguous and exceeds the number of Interrogatories  
5 allowed under the Federal Rules, this amounts to Interrogatory 32. Subject to these objections and  
6 without waiving any of them R & R responds as follows:  
7

8 32) R & R incorporates by reference its response to Interrogatory No. 1.

9 **INTERROGATORY NO. 19.** Describe in detail any COMMUNICATIONS between  
10 YOU and the Las Vegas Convention and Visitors Association regarding the latter's use or potential  
11 use of the term WHAT HAPPENS IN VEGAS STAYS IN VEGAS and identify the documents that  
12 RELATE TO those COMMUNICATIONS.  
13

14 **RESPONSE TO NO. 19:** Plaintiff objects to this Interrogatory on the basis that it calls for  
15 information protected by the attorney client privilege or work product doctrine and this exceeds the  
16 number of Interrogatories allowed under the Federal Rules, this amounts to Interrogatory No. 33 and  
17 34.

18 **INTERROGATORY NO. 20.** Describe in detail any COMMUNICATIONS between  
19 YOU and the Las Vegas Convention and Visitors Association regarding this lawsuit and identify the  
20 documents that RELATE TO those COMMUNICATIONS.

21 **RESPONSE TO NO. 20:** Plaintiff objects to this Interrogatory on the basis that it is overly  
22 broad, unduly burdensome, vague and ambiguous and exceeds the number of Interrogatories  
23 allowed under the Federal Rules, this amounts to Interrogatory No. 35. Plaintiff objects to this  
24 Interrogatory on the basis that it calls for information protected by the attorney client privilege or  
25 work product doctrine.

26 **INTERROGATORY NO. 21.** Describe in detail all damages YOU have suffered or may  
27 or will suffer due to Tovar's use of the term WHAT HAPPENS IN VEGAS STAYS IN VEGAS  
28 and identify the documents that RELATE TO those damages.

1       **RESPONSE TO NO. 21:** Plaintiff objects to this Interrogatory on the basis that it is overly  
2 broad, unduly burdensome, vague and ambiguous and exceeds the number of Interrogatories  
3 allowed under the Federal Rules, this amounts to Interrogatory Nos. 36 and 37. Subject to these  
4 objections and without waiving any of them R & R responds as follows:

5       36) Plaintiff having just received Defendant's financials is in the process of calculating its damages  
6 and will provide a report at a date and time set forth in the Discovery Schedule.

7       **INTERROGATORY NO. 22.** Do YOU contend that YOUR alleged rights to the term  
8 "What Happens Here Stays Here" precludes Tovar from using as a trademark all terms in the  
9 WHAT HAPPENS [word(s)] STAY [word(s)] format?

10       **RESPONSE TO NO. 22:** Plaintiff objects to this Interrogatory on the basis that it is overly  
11 broad, unduly burdensome, vague and ambiguous and exceeds the number of Interrogatories  
12 allowed under the Federal Rules, this amounts to Interrogatory No. 38. Subject to these objections  
13 and without waiving any of them R & R responds as follows:

14       38) Yes.

15       **INTERROGATORY NO. 23.** State whether YOU affix the TM symbol, or some other  
16 symbol or statement providing notice of claimed trademark rights, to the term "What Happens Here  
17 Stays Here" and, if so, identify the goods or services on which the term with the symbol is affixed  
18 and state the first date the term with the symbol was affixed to those goods or services.

19       **RESPONSE TO NO. 23:** Plaintiff objects to this Interrogatory on the basis that it is overly  
20 broad, unduly burdensome, vague and ambiguous and exceeds the number of Interrogatories  
21 allowed under the Federal Rules, this amounts to Interrogatory No. 39, 40 and 41. Subject to these  
22 objections and without waiving any of them R & R responds as follows:

23       39) R & R uses the TM symbol on advertisements

24       40) The goods or services upon which the mark is fixed is on merchandise items such as  
25 clothing.

26       41) The Mark was first used in commerce at least as early as December 27, 2002.

27       **INTERROGATORY NO. 24.** Identify all witnesses by name and address who YOU expect  
28 to call to testify at trial and state the subject matter of each witness' testimony.



1       **RESPONSE TO NO. 24:** Plaintiff objects to this Interrogatory on the basis that it is overly  
2 broad, unduly burdensome, vague and ambiguous and exceeds the number of Interrogatories  
3 allowed under the Federal Rules, this amounts to Interrogatory No. 42). Subject to these objections  
4 and without waiving any of them R & R responds as follows:

5       42) At least the following witnesses are expected to be called: Dorothy Tovar, Rob Dondero  
6 William Vassiliadis and Adrenaline Sports and /or Pure Pleasure Representatives.

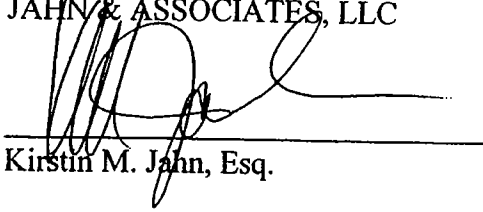
7       **INTERROGATORY NO. 25.** Identify each person who assisted in any manner in the preparation  
8 of the answers to those Interrogatories.

9       **RESPONSE TO NO. 25:** Plaintiff objects to this Interrogatory on the basis that it exceeds  
10 the number of Interrogatories allowed under the Federal Rules, this amounts to Interrogatory No.

11       43). Subject to these objections and without waiving any of them R & R responds as  
12 follows: Morgan Baumgartner.

13 Dated: March 15, 2005

JAHN & ASSOCIATES, LLC

  
Kirstin M. Jahn, Esq.

John P. Desmond  
JONES VARGAS

Attorneys for Plaintiff  
R & R Partners, Inc.



**VERIFICATION**

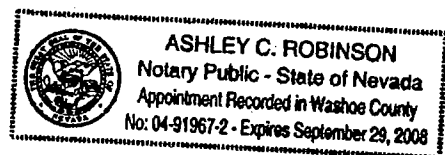
STATE OF NEVADA       )  
                                  )ss.  
COUNTY OF WASHOE    )

William Vassiliadis, being first duly sworn, deposes and says that he is the Chief Executive Officer of R & R Partners, Inc.; that he verifies for and on behalf of R & R Partners, Inc. the foregoing Response to Defendant's First Set of Interrogatories to Plaintiff; that he is duly authorized to do so; that he has read the foregoing and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

  
William Vassiliadis

**SUBSCRIBED** and **SWORN TO** before me  
this 16<sup>th</sup> day of March, 2005  
by **WILLIAM VASSILIADIS**.

  
NOTARY PUBLIC



CERTIFICATE OF SERVICE

I certify that on March 15, 2005, I mailed a copy of Plaintiff's Response to Defendant's First Set of Request for Interrogatories to the following:

Daniel Ballard, Esq.  
McDonough Holland & Allen, PC  
555 Capitol Mall, 9<sup>th</sup> Floor  
Sacramento, CA 95814

Barry Breslow, Esq.  
Robison, Belaustegui, et al  
71 Washington Street  
Reno, NV 89503

  
Tina V. Moonie